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**From:** Stewart McGarrity [Stewart.McGarrity@tie.ltd.uk]  
**Sent:** 17 January 2008 15:56  
**To:** Alan Coyle; Rebecca Andrew; Donald McGougan  
**Cc:** Dennis Murray; Steven Bell; Graeme Bissett; Geoff Gilbert; Miriam Thorne; Fitchie, Andrew  
**Subject:** RE: Advance Purchases  
**Attachments:** Initial milestone Infraco - Tramco 101207.doc; Copy of appendix 1 - Initial milestones v1.xls

Alan,

We have a diarised session next Tuesday to go through pricing and risk. Can we deal with this issue then? I'm happy to get in a taxi and come discuss this with Donald anytime.

I attach again a copy of the "Initial Milestones" paper which was presented to CEC and TS back in early December with the appendix which details the individual payments for advance material purchases and in addition all other pre 31<sup>st</sup> March milestones anticipated. The advance material purchases element is £15.5m on Infraco and £8.7m on Tramco totalling the £24.2m you refer to. As of today these amounts are still not yet cast in stone in the Infraco / Tramco milestone schedules but let's assume for now they will not change. To be clear there are 9 items making up the £15.5m under Infraco (including the steel for the rails at £8.5m) and 6 items making up the £9.3m under Tramco (including ordering the traction package at £8.7m).

The Protections Against Impact of Supplier Insolvency are listed at page 4 of the paper and this has always included the Bonds available under the contract and the recourse on a joint and several basis to each of the two parties to the Infraco consortium and to their ultimate holding companies Siemens AG and Bilfinger Berger AG. On Tramco we are contracting directly with the CAF ultimate holding company. For avoidance of doubt the failure of a subcontractor or supplier is a risk to the Infraco or Tramco under the contracts.

Page 4 of the paper also points to the reality that the subcontracts and orders will 'vest' (or whatever the equivalent legal term is in Scotland) title in the advance material purchases in CEC. This in fact applies to all expenditure under the contracts – title in the whole lot is with CEC. The thought which I expressed out loud for Rebecca to think about yesterday (and what has prompted your email) was that perhaps the Bonds and access to PCGs alone gives adequate comfort with respect to the quantum advance material purchases anticipated and a paper chase to track down 'vesting' certificates (or the equivalent) as a pre-cursor to certifying the related milestone payments to Infraco and Tramco may present difficulties. However I will keep this under review with Dennis, Geoff and Andrew F.

The Performance Bond under Infraco will be £20m at the outset and will remain at £20m till the end of construction. To this can be added the Retention Bond which will be £2m initially until the completion of the dept then rise in steps to £10m as we reach each sectional completion. Under Tramco, the final Bond values are still being negotiated and there is some question as to whether a bond will be available at all until the delivery of the first Tram. Here the protection is not quite the mighty asset base of Siemens and Bilfinger Berger and we might want to think a bit more about the traction package order at £8.7m. I'll revert on Tuesday.

Again referring to the attached report – an early commitment to price sensitive advance material purchases secured us a value for money discount in negotiating both the Infraco and Tramco contracts. I don't feel comfortable that TS are off looking for Audit Scotland sign off on this and can't confirm the funding for purchases at present. Can we discuss a plan B?

Lastly – I'm very sorry but we I dot recall TS requesting a note from BBS on when the steel would be in place? On 14<sup>th</sup> Dec (copied to you) I gave the following indication of when the related expenditure would be booked on Advance Material Purchases to Guy Houston at TS:

*In the expenditure profile we have assumed the following split:*

- 100% of Tramco (£8.7m) in 2009/10
- 45% of Infraco (£7m) in 2008/09 and 55% (£8.5m) in 2009/10 (this is conservative)

That is the best available estimate until the contract, the programme and the price and milestone schedules are complete but it is unlikely to be significantly off beam. Please revert if this is a problem for anyone as getting a letter out of BBS rather than just relying on our estimates seems to be out of proportion to the criticality of the information.

Regards,

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Stewart  
[REDACTED]

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**From:** Alan Coyle [mailto:Alan.Coyle@edinburgh.gov.uk]  
**Sent:** 17 January 2008 10:31  
**To:** Geoff Gilbert  
**Cc:** Rebecca Andrew; Donald McGougan  
**Subject:** FW: Advance Purchases

Hi Geoff

Following discussion between Rebecca, Andrew Fitchie and Stewart McGarrity on advance purchases totalling £24m it is imperative that a session be set up including Donald McGougan to ensure that CEC are protected with regard to the prepayments in the first Infraco milestone payment.

I recall from our meeting with Transport Scotland on 30th Nov 07 that they were to provide the contractual terms of the deal and how they propose to mitigate the risks of payments in advance. From my notes I see that it was proposed that there would be vesting agreements in place that would guarantee CEC to title of the asset.

In addition TS requested a note from BBS which would give an indication of when the steel would be in place which would help to determine when this expenditure would be accounted for.

I understand it is now proposed that protection for the advanced payments is to be encompassed in the overall package of measures (liquidated damages, parent company guarantee, joint and several liability, retention bond). In view of this it is important that Donald is fully aware of the extent and limitations of this package, so that he can assess overall risk. Given that if the package is insufficient to satisfy CEC, negotiations may have to be reopened, we should get a meeting set up ASAP.

Would it be possible to get a range of times for this slot so that we can accommodate it in Donald's diary.

Regards,  
Alan

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